

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEN L. FEINGOLD : CIVIL ACTION  
 :  
v. :  
 :  
OFFICE OF DISCIPLINARY :  
COUNSEL, et al. : NO. 10-3357

MEMORANDUM

McLaughlin, J.

January 19, 2011

This action was brought by a former attorney who was disbarred in 2008 for alleged constitutional violations relating to his disbarment. The defendants have filed motions to dismiss the plaintiff's complaint. For the following reasons, the Court will grant the defendants' motions.

The plaintiff previously filed suit in federal court concerning actions taken by the Office of Disciplinary Counsel and others in Pennsylvania state court regarding the plaintiff's disbarment and the appointment of a conservator to restrict the plaintiff's access to his office and case files. See Feingold v. Office of Disciplinary Counsel, No. 09-4421, 2009 U.S. Dist. LEXIS 116806, at \*1-5 (E.D. Pa. Dec. 14, 2009). Due to a pending writ of mandamus filed in state court, this Court concluded that it either lacks subject matter jurisdiction under the Rooker-Feldman doctrine or must decline to exercise jurisdiction under the Younger abstention doctrine. The Court's reasoning was dependent on whether a petition for writ of mandamus is an on-

going state court proceeding. Id. at 6-7.

On July 8, 2010, the plaintiff filed his second complaint in federal court alleging similar facts as his 2009 federal suit and including additional events from 2010. This action seeks an injunction prohibiting the defendants from controlling the plaintiff's files and access to his office, among other things. See Pl's Mot. Pre. Inj. at 1-2 (Docket No. 2). This action, like the 2009 federal action before it, asserts that the defendants have violated the plaintiff's constitutional rights through the restriction of access to his files in his office and restrictions against filing motions in state court without leave of court.

On January 18, 2011, the Court received notice from the Honorable Chad F. Kenney, Sr. that a trial has been scheduled for February 17, 2011 in the underlying state court disciplinary proceeding. See Office of Disciplinary Counsel v. Feingold, No. 090800084 (Phila. Ct. Com. Pl. Jan. 18, 2011). The Court takes judicial notice of this Order. See Anspach v. City of Phila., 503 F.3d 256, 273 n.11 (3d Cir. 2007) (court may take judicial notice of public records when ruling on Rule 12(b)(6) motions to dismiss).

District courts must abstain from enjoining state judicial proceedings when (1) there is a pending state proceeding that is judicial in nature, (2) the proceeding implicates

important state interests, and (3) there is an adequate opportunity in the state proceeding for the plaintiff to raise his constitutional challenges. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431 (1982).

Because of the pending trial in the underlying state court disciplinary matter, the Court must abstain from exercising jurisdiction under the doctrine of Younger abstention. This pending trial, which implicates important state interests, will provide the plaintiff the opportunity to raise his constitutional challenges and seek appropriate redress.

An appropriate Order shall issue separately.

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ORDER

AND NOW, this 19th day of January, 2011, upon consideration of the Defendants ODC, Philadelphia Court of Common Pleas, Paul Killion, Anthony Sedroski, Amelia Kittredge, Carme Nasuti, Paul Burgoyne, Donna Snyder, Jessie Herreda, Russell Nigro, and the Hon. Pamela P. Dembe's Motion to Dismiss (Docket No. 10); Defendant Joseph Evers' Motion to Dismiss (Docket No. 16); and Defendants 1515 Market Street and Deanna Ballinger's Motion to Dismiss (Docket No. 20); the oppositions and replies thereto; following oral argument on December 17, 2010; and for the reasons stated in a memorandum of today's date; IT IS HEREBY ORDERED that the Defendants' Motions to Dismiss are GRANTED and this case is DISMISSED WITH PREJUDICE. The Clerk of Court shall mark this case as closed.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.